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Supreme Court, U.S.
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No. 04-491

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2004

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DURAND DICKERSON
PETITIONER

v.

G. RONALD BATES JR., CHARLENE BROWN, PAUL LEAVITT, DEBORAH LEAVITT, and CROW, CLOTHIER & BATES, a KANSAS CORPORATION
RESPONDENTS

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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# REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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## REASONS FOR GRANTING THE WRIT

COMES NOW the petitioner, Durand Dickerson and files his reply to the respondents response.

## I
## STATEMENT OF THE CASE

Respondent alleges that there were only two (2) cases filed that are the subject of the illegal garnishment, post-judgment by the respondents. There were four (4) cases subject to the illegal garnishment in the Leavenworth County District Court filed by Paul and Deborah Leavitt. They are as follow:

1) Paul and Deborah Leavitt
V. Case No. 9608 LC 698
Durand Dickerson

2) Paul and Deborah Leavitt
V. Case No. 9612 LC 1284
Durand Dickerson

3) Paul and Deborah Leavitt
V. Case No. 9702 LC 190
Durand Dickerson

4) Paul and Deborah Leavitt
V. Case No. 9704 LC 474
Durand Dickerson

The respondents may have sought post-judgment relief, however they never received execution and garnishment which is the subject of this petition.

This present case does not make any factual allegations for relief that was raised in any prior proceedings.

## ARGUMENT

Petitioner had no prior opportunity to litigate his claim of R.I.C.O. against the respondents. The respondents can cite and have not cited case law in Kansas as to litigation concerning illegal and unlawful garnishments post-judgment. The respondents citing of *True Heart Corp. v. River City Auto Sales, Inc.* 32 Kan. App. 2d 237, 82 P3d 519 (2003) in no way applies to illegal and unlawful post-judgment garnishment taking from a court bond funds without authority. Petitioner has no opportunity to raise this issue in the state court proceedings where he had no opportunity to litigate his post-judgment claim. (Respondents Response Page 4).

Petitioner's allegations are both constitutional, fifth amendment (Appendix C) and fourteenth amendment due process (Appendix D) and statutory, mail fraud 18 U.S.C. 1341 (Appendix F, page 13 # 66, 67, 68 and page 14 # 71 and 72). The inclusion of the words "void judgment" in the predicate acts does not in any fashion mean that petitioner is challenging a void judgment.

Petitioner is not challenging how the garnishments were "applied", but how they were collected post-judgment (Appendix F page 16 Overt Acts #79 through #90) which do not include any "application" of garnishments. (Appendix F page 20 #102, 108, page 21 #109 through #113; page 22 #117 through #123; page 23 #127 through #133). These overt acts set forth the overall scheme.

Petitioner could not have raised on appeal the unlawful and illegal garnishment, as he is not psychic, that is about six (6) weeks before the appellate decision was released by the Kansas Court of Appeals was when the illegal and unlawful

post-judgment collection occurred. Petitioners' attack on the garnishments do not call into question the underlying judgment, **only** the unlawful and illegal collection and disbursement of the bond funds without a court order and prior to the Kansas Court of Appeals decision being released. Petitioner claims has nothing to do with the state court judgment, and any decision on his R.I.C.O. claims would not disturb the final judgment in the state court proceedings.

Petitioner statement throughout his R.I.C.O. claim on "void judgment" is only repetition of the respondents admissions. Nothing can be considered as inextricably intertwined with the state court "judgment". In *Pennzoil*, five Justices concluded in concurring opinions that *Rooker-Feldman* did not divest a federal court of jurisdiction of *Texaco's* constitutional challenge to Texas's "post-judgment" collection procedures. See *Pennzoil* 481 US 1 (1987) at 18 (Scalia J. concurring); id 21 (Brennan concurring); id at 28, 107 S. Ct. 1519 (Blackman J. concurring); id at 31 n.3 107 S. Ct. 1519 (Stevens J. concurring); cited in *Kenmen Engineering v. City of Union* 314 F3d 468, 475 (10th Cir. 2002).

Petitioner has brought a constitutional challenge, fifth amendment due process clause and fourteenth amendment due process clause to a state of Kansas law that does not request that the federal court upset the prior state court judgment, and the prior state court judgment did not "actually" decide that the state law at issue was factually constitutional.

Therefore there is no jurisdictional bar to the Court's decision in this case. Where the Court, in resolving petitioners' challenge to the constitutionality of the garnishment collection process does not need to decide any

issue actually litigated in the Kansas court or is inextricably intertwined with the issues so litigated (*Pennzoil* 481 US 1 at 18 (Scalia J., O'Connor J. concurring).

Respectfully Submitted

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**VERIFICATION**

I, Durand Dickerson, verifies pursuant to 28 U.S.C. 1746(2) that the information contained in the attached reply brief of the petitioner is true and correct to the best of my knowledge un the penalty of perjury.

Durand Dickerson